

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

11-0445R

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A THREE YEAR CONCESSION AGREEMENT WITH THE CHESTER BOWL IMPROVEMENT CLUB FOR THE OPERATION OF CHESTER BOWL CHALET, ALPINE SKI AREA AND OTHER PROGRAMMING FOR THE SUM OF \$60,000.

CITY PROPOSAL:

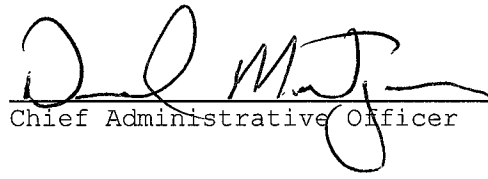
RESOLVED, that the proper city officials are hereby authorized to enter into a three-year Agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. \_\_\_\_\_, with the Chester Bowl Improvement Club for the continued operation of the Chester Bowl chalet, alpine ski area and other programming for compensation of \$60,000; payment to be made from Fund 110-121-1219-5319 (General, Public Administration, Parks and Recreation).

Approved:



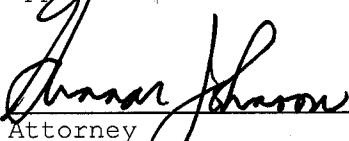
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PARKS/ATTN TLL:cjk 8/18/2011

STATEMENT OF PURPOSE: This resolution authorizes an agreement between the City of Duluth and the Chester Bowl Improvement Club ("CBIC"), a Minnesota non-profit corporation. Under the terms of the agreement, CBIC will continue to serve as the concessionaire at the Chester Bowl Chalet. CBIC will continue to operate the Chalet concession as it has in the past and will also continue to operate and manage the alpine ski facility and related youth programs. CBIC may also continue to produce community festivals and events. The City will pay \$20,000 per year for these services, for the next three years for a total of \$60,000.

## **CHESTER BOWL IMPROVEMENT CLUB CONCESSION MANAGEMENT AGREEMENT**

### **PARTIES**

THIS AGREEMENT is by and between the CITY OF DULUTH, hereinafter known as the "City" and the CHESTER BOWL IMPROVEMENT CLUB, hereinafter known as the "CBIC", a Minnesota non-profit corporation. This Agreement replaces and supersedes any earlier agreement between the parties.

The parties acknowledge the following:

- A. The City is a Minnesota municipal corporation located in St. Louis County and with its address at 411 West First Street and is the owner of a public park known as Chester Bowl, located at 1801 E. Skyline Parkway (the "Premises"); and
- B. The Premises have long been the location of public recreation and the recreational programming provided excellent public recreation and benefits to the community, its citizens, residents and area visitors (the "Programs"). The City terminated the program in September of 2008 as part of its budget correction measures. In December of 2008, the City retained the services of CBIC to operate and manage the Premises and entered into a concession management agreement that expires at midnight on December 15, 2011; and
- C. The CBIC has long partnered with the City to provide recreational programming at the Premises and desires to continue a program of recreational activities to be offered at the Premises; and
- D. Within the Premises is a building commonly referred to as the chalet (the "Chalet") which is used for Program activities and rental to the public for private events and also houses office space (the "Chalet Uses"); and
- E. The City desires to continue the services of CBIC pursuant to Minnesota Statutes, including Section 471.191, Subd. 4, to operate and manage the park Programs, the Chalet and appurtenant facilities for the purpose of maintaining qualified expert management on behalf of the City and the public; and
- F. The CBIC wishes to continue to operate a concession providing recreational activities to the public.

NOW THEREFORE, in consideration of the mutual covenants contained herein, both parties agree as follows:

## **ARTICLE 1. PREMISES**

The PREMISES that is the subject of this Agreement is park property known as Chester Bowl, located at 1801 E. Skyline Parkway (the "Premises").

## **ARTICLE 2. TERM OF AGREEMENT**

This agreement shall commence on December 16, 2011 and end at midnight on December 31, 2012, and shall thereafter automatically be renewed for two successive one (1) year periods beginning on the first day of each calendar year, unless either party gives written notice of its intent to terminate the agreement on or before July 1<sup>st</sup> of any year this Agreement is in effect. This Agreement shall finally terminate at midnight on December 31, 2014.

## **ARTICLE 3. SCOPE OF SERVICES**

3.1 CBIC at its cost and expense, shall operate and manage all aspects of the operation of the Premises as specified in this Agreement, including operations that are incidental or related thereto, attaining efficiency designed to make the operation financially self-sustaining and managing the CBIC's workforce.

3.2 The parties intend by the Concession Management Agreement to continue the public recreation purpose of the Premises. This Agreement shall be performed, applied and interpreted to attain that objective. To ensure such public recreation purposes, CBIC shall submit to the City its proposed program schedule no later than June 1<sup>st</sup> of each year of this Agreement. Except as provided in this Agreement, the City shall retain regulatory power and control sufficient to assure that such public recreational purpose will be achieved.

3.3 CBIC shall be diligent in the operation of the Premises and shall do those things necessary to give the public adequate and proper service, and at a price that shall be just and reasonable under the circumstances, and to maintain the Premises operated by CBIC open to all persons upon equal terms. CBIC shall have the exclusive right to set prices for the services it offers, as well as vendor fees at festivals and other events, and shall have the right to retain all proceeds from such operations. It is understood and agreed that such charges and prices shall be family friendly, to keep the operations financially accessible to the general community and not to be exclusive.

3.4 CBIC shall observe the normal hours of park operation as established by the City according to paragraph 13.6. All events and activities offered by CBIC will observe these hours unless a permit is obtained from the City for extended hours. The CBIC shall ensure that all persons, including vendors, have exited the Premises by the designated closing time.

3.5 CBIC shall operate an alpine skiing concession and shall provide sufficient

number of paid staff or volunteers to adequately staff the following services:

- a. Ski equipment rental, including but not limited to skis, boots, helmets and poles. CBIC is responsible for purchasing such equipment and for all maintenance and disposal of such equipment. All such equipment shall remain the property of the CBIC. All such equipment shall be inspected and maintained by the CBIC. All ski rental forms shall clearly identify the CBIC as the entity responsible for the equipment rental.
- b. Ski lessons. CBIC may provide ski lessons and shall provide all instructors for such lessons. CBIC shall be responsible for the selection, training and supervision of the ski instructor personnel.
- c. Alpine skiing. CBIC may provide for a program of alpine skiing. CBIC shall be responsible for the selection, training and supervision of its staff. CBIC shall provide all equipment and services necessary for the provision of such program.
- d. City equipment. To the extent City equipment previously used for a ski program remains on the Premises, such equipment may be utilized by the CBIC. CBIC shall be responsible for the maintenance of all such equipment. As necessary, at such time as such equipment is no longer suitable for use, CBIC shall notify the City and the City shall have the right to determine the appropriate method of disposal of such surplus property. The City shall not be responsible for replacing equipment.
- e. Ski Patrol Services. CBIC shall provide and be responsible to schedule ski patrol personnel during all times that the alpine ski operations are open. CBIC shall be responsible for the selection, training and supervision of ski patrol personnel. CBIC shall be responsible for all equipment necessary to provide such services. CBIC shall be responsible for determining the number of ski patrol personnel on duty during alpine operations.
- f. Chair-lift operation. The CBIC shall operate a chair lift and shall be responsible for the hiring, training and supervision of all personnel required for the operation of the chairlift. CBIC has the exclusive right to determine the schedule for chair-lift operation.
- g. Lift ticket sales. CBIC shall sell daily ski lift tickets and alpine skiing season passes to the general public as part of the concession activity. Subject to the provisions of paragraph 3.3, CBIC shall have the exclusive right to establish the fee for daily lift tickets and season passes.

- h. Ski cadet program. CBIC may coordinate and supervise a ski cadet program. The CBIC shall be responsible for the selection, training, and supervision of all participants of the ski cadet program and shall be responsible for all rules established for such program.

3.6 Food and Beverage Sales. CBIC shall have the exclusive right to operate a concession during their Programs to sell items, including but not limited to, food, beverages and various items displaying the CBIC logo. All equipment necessary to operate the concession shall be provided by CBIC and shall remain the property of CBIC. The concession operation shall comply with all applicable laws and regulations.

3.7 CBIC may present community festivals. The schedule of all such festivals must be submitted to the City for approval as part of the annual schedule provided for in paragraph 3.2.

- a. CBIC shall collect all fees for the festival events and shall use such fees to pay all festival expenses.
- b. Festival events may consist of musical performances and other forms of entertainment appropriate to a family oriented community festival, food vendors, and other product vendors.

3.8 For the "Music in the Park" series of concerts coordinated with the City, as described in paragraph 13.13, CBIC shall be responsible for staffing the concerts, whether paid or volunteer.

3.9 The following general conditions shall apply to all community festival and concert events managed by CBIC:

- a. City shall be identified as a major sponsor. CBIC will include the City logo on all printed materials, printed promotional items, printed advertisement and banners. CBIC will recognize the City as a major sponsor in all press releases, media kits, radio and/or television advertising.
- b. No entry fee may be charged to the public for entering the park. However, CBIC may solicit donations.
- c. CBIC shall be responsible for providing all traffic control and security, and shuttle buses for the festival events. Public parking may be prohibited within the park during large festival events. Vehicular traffic within the park during festival events may be limited to vendors, performers, vehicles transporting persons with disabilities, festival management and security. All authorized vehicular traffic shall be clearly identified as such.

- d. CBIC shall provide, at its expense, trash collection receptacles and attendant services in sufficient quantity to maintain Premises in a reasonable state of cleanliness before, during, and through the conclusion of the final cleanup of the entire Premises after the conclusion of the festival and concert events. If required by the St. Louis County Health Department, CBIC shall provide specialized disposal receptacles and related pick up services, through a competent vendor, for the handling of liquid, oil, fatty, or other materials disposed of and requiring special and/or separate handling before, during, or after its event. CBIC shall provide, at its expense, for the separation of recyclable plastic bottles, aluminum cans and cardboard boxes that is created at festival and concert events and for its removal from the site to the appropriate collection site.
- e. CBIC shall provide, at its expense, a sufficient quantity of portable toilet units, including a sufficient quantity of handicap accessible units, complete with ongoing cleaning and servicing throughout festival and concert events to provide safe, minimum standards of sanitation and public convenience.
- f. The CBIC may sell 3.2 malt liquor beverages during festival events. All such sales are subject to all City and State laws and regulations regulating the sale of such beverages.
- g. CBIC may sublet or rent out a reasonable amount of space on said Premises to lawful and appropriate vendors, concessionaires or other business ventures. It shall be the responsibility of the CBIC to verify that each vendor, concessionaire, or business sublettee possess a valid City of Duluth Sales Tax Permit before allowing for the set up or subsequent sales activities of any such vendor, concessionaire or sublettee. CBIC shall ensure that all vendors, concessionaires or business sublettees meet all minimum St. Louis County Health Department requirements or any other requirements as may be required by any applicable laws, codes, or ordinances, in force at the time of said event.
- h. CBIC shall not drive stakes, excavate, or otherwise install any other underground apparatus into any of the grounds of the Premises without first providing a detailed, precise map to the City of all proposed underground locations at least Fifteen (15) days in advance of a festival or concert event.

CBIC shall not proceed with any underground actions without first securing City approval and further having all underground utilities properly located by One Call prior to proceeding with said underground actions.

- i. CBIC shall limit the on-ground use of wires, hoses, etc. to only those areas which are not accessible to normal pedestrian traffic. In the event

CBIC needs to allow the installation of on-ground utilities, CBIC shall first secure the permission of City and comply with all applicable codes and laws pertaining to said installations.

- j. CBIC may make temporary improvements to the grounds such as erection of fencing, scaffolding, special platforms, or other apparatus necessary to ensure the success of the festival or concert event or the safety of staff, performers, and the general public. No construction, alteration, or improvement shall begin until approved by the City and all necessary building permits are secured. All construction or apparatus installed on said Premises shall conform to any and all applicable laws or building codes governing such installations.
- k. Except as set forth in paragraph 13.13, CBIC agrees that it will obtain a valid ASCAP, BMI, and SESAC licenses (the Licenses) prior to offering any performances for which such license are required by state or federal law.

3.10 CBIC may provide a summer youth program and shall provide all staffing for such program. CBIC shall be responsible for the selection, training, and supervision of the youth program personnel. CBIC shall be responsible for the supervision of all participants in such program.

3.11 CBIC shall offer the Chalet for rental to the public for private parties and events and maintain a calendar of all such rentals. All such rentals shall be documented by a written rental agreement. The form of the rental agreement shall be approved by the City Attorney prior to its use by the CBIC. CBIC shall establish rental rates and offer the Chalet rental as provided in paragraph 3.3. CBIC shall be responsible for the management of such rental activity, including but not limited to janitorial services. If the rental activity will include the consumption of alcoholic beverages, CBIC shall be responsible for ensuring that the renter has obtained the appropriate alcohol permit from the City and that all such consumption occurs in compliance with all laws regulating such consumption. CBIC shall have the right to retain all proceeds from such rental activity.

3.12 CBIC may expand programs outlined herein or offer additional programs and services, subject to the approval of the City.

3.13 CBIC shall have exclusive use of the following storage spaces on the Premises for CBIC equipment: Garage(s) No. 1, 3 and 4. CBIC shall have shared use with the City of Garage No. 2. A map of the garages is attached hereto and made a part hereof as Exhibit A. The intent of Exhibit A is to allow the parties to identify the specific garages described in this paragraph.

## **ARTICLE 4. CBIC'S DUTIES**

4.1 CBIC shall employ at least one person who shall be competent to supervise alpine ski operations and the management of Chalet operations. CBIC shall maintain a management office at the Chalet facility. CBIC shall ensure that said Premises will be properly supervised and overseen by an employee or agent of CBIC with sufficient empowerment and decision making authority to act on behalf of CBIC during all hours of operation.

4.2 CBIC shall operate and maintain the public areas of the Chalet, including but not limited to all restrooms, the CBIC storage facility and the alpine ski facilities in a neat, clean, orderly, safe, sanitary and presentable condition, and according to the health department standards for eating establishments, whether CBIC acquires an eating establishment license or not. CBIC shall provide for all supplies necessary for such operation and maintenance. CBIC shall keep the restrooms open during all hours that the Premises is open to the public.

4.3 CBIC shall promptly notify City of any maintenance that is the responsibility of the City and shall immediately take actions to maintain the public safety, avoid injury to persons and limit damage to the Premises.

4.4 CBIC shall be responsible for snow and ice removal and treatment thereon of all sidewalks and pathways servicing the Chalet and CBIC storage facilities.

4.5 The parties acknowledge that the making of snow is a joint operation of the CBIC and City and that cooperation between the parties is required. To this end, CBIC shall be responsible for providing the snow-making gun(s) and shall also be responsible for the repair, maintenance and replacement of such gun(s). CBIC shall be responsible for providing the personnel and volunteers necessary to operate the gun(s) and supervise its snow-making personnel and volunteers. The CBIC shall have no supervisory control over City staff provided by the City to support snow-making operations as set forth in paragraphs 13.2 - 13.4.

4.6 All CBIC revenues generated by activities occurring on the Premises shall be placed in a dedicated fund, administered by the CBIC. CBIC shall use all such revenues to support CBIC activities occurring on the Premises.

4.7 CBIC may purchase equipment to be used at the Premises. If such equipment is a fixture, such equipment shall not be installed until such time as CBIC has by written instrument offered the equipment to City as a gift, and the gift has been accepted by resolution of the City Council. Within ten (10) days of acceptance of the gift, CBIC shall provide City with all original receipts and/or invoices and all warranty information. Any equipment made a gift to the CITY shall become the property of the CITY.



4.8 CBIC shall maintain a current list of the identity of all key holders. Such list shall include the full name, address and phone numbers and e-mail address, if any, of such key holder. Such list shall be maintained by the site manager at the Chalet office and shall be made available to the City immediately upon the City's request.

4.9 CBIC agrees to procure and maintain, at the CBIC's expense, all licenses and permits necessary for carrying out the provisions of this agreement.

4.10 CBIC agrees to promptly pay the undisputed portion of all invoices and expenses related to its activities and/or occupancy of the Premises in accordance with the terms of each applicable contract or, if no contract terms apply, within the time period set forth in Minnesota Statutes, Section 471.425, subd. 4a.

4.10 At the termination of this Agreement, CBIC shall surrender and return the Premises to the City in the same or better condition than it was on the date hereof excepting reasonable wear and tear and capital improvement items that have been discarded because they were replaced. At termination, CBIC shall also remove all of its personal property from the Premises and shall return all keys issued to it.

#### **ARTICLE 5. LIMITS OF USE**

5.1 CBIC agrees that said Premises shall only be used for CBIC activities as provided in Article 3 of this Agreement and related support services and for no other purpose.

5.2 The City expressly reserves the right to the unlimited access to said Premises for authorized personnel at any time and at its sole discretion.

5.3 CBIC shall have no right to alter the locks to any of the facilities located upon the Premises. All locks and keys shall be in the custody and control of the City. All keys shall be issued by the City and pursuant to its administrative requirements.

5.4 CBIC shall not interfere with public access to and lawful use of Premises and its facilities.

5.5 CBIC shall have no authority over or responsibility for any ski jump(s) located upon the Premises. City shall have sole custody, control and responsibility for such jump(s).

#### **ARTICLE 6. CBIC EMPLOYEES**

6.1 CBIC shall be responsible for operation and management of the Premises as set forth in this Agreement.

6.2 All personnel engaged or hired by CBIC shall be employees, agents or independent contractors of CBIC and not of the City. CBIC shall be responsible for the selection, training, supervision and compensation, including salary and benefits, of its personnel.

## **ARTICLE 7. IMPROVEMENTS TO PREMISES**

7.1. In the event that CBIC wishes to make any changes to the Chalet or CBIC's storage buildings, CBIC shall acquire the authorization to do so in writing from the City's Chief Administrative Officer ("CAO"). The CAO shall approve or disapprove any such proposed modifications in the exercise of the CAO's sole discretion. In the event that any such modifications are approved, such modifications shall be undertaken only in accordance with the procedures and with the approvals set forth in this Article.

7.2. CBIC shall submit working drawings, specifications and elevations for the construction of Improvements together with any applicable detailed site, grading, utility and landscaping plans and elevations to the CAO for approval. If the CAO rejects such changes in whole or in part as not being in compliance with the requirements of this Agreement, the City shall notify the CBIC of said rejection together with the reason or reasons therefore. CBIC may re-submit new or corrected plans, specifications and elevations meeting said objections. The provisions of this Subparagraph relating to approval, rejection and resubmission of corrected plans herein provided for with respect to any changes to the originally submitted plans, specifications and elevations shall continue to apply until said changes have been approved by the CAO. All such plans, specifications and elevations shall be in conformity with this Agreement and with all applicable laws, ordinances, rules, regulations and requirements of the City, State of Minnesota and United States of America. Acceptance of CBIC's plans, specifications and elevations shall not constitute a waiver of applicable codes or ordinances or other developmental duties imposed in the future upon CBIC by law. CBIC shall be solely responsible for all costs connected with said plans, specification and elevations and any revisions thereto.

7.3. Any changes made to plans by CBIC after the initial approval thereof shall be submitted to the CAO for approval or disapproval in the same manner as set forth in this Article.

7.4. Upon City approval of Club's construction plans, CBIC shall promptly commence construction of improvements in conformance with the City approved plans and construction contract. Construction of improvements shall be completed not later than six (6) months from the date of commencement thereof unless a different time period is approved by the City. All improvements so constructed become the property of the City of Duluth.

7.5. CBIC shall bear all costs related to the development, completion and operation of Improvements and any modifications thereto and agrees that it will pay all

costs and expenses in a timely manner as described in paragraph 4.10.

## **ARTICLE 8. HOLD HARMLESS**

CBIC agrees to defend, indemnify, and save harmless the City and its officers, agents, employees and servants, from any and all liens, claims, suits, demands, liability, judgments, costs, damages and expenses, including attorney's fees, which may accrue against or be charged to or may be recovered from the City by reason of or account of or in any way related to the CBIC's use or occupancy of the Premises, by its employees, agents, volunteers, invitees or attendees, under this agreement. Upon ten (10) days written notice, CBIC will appear and defend all claims and lawsuits against the CITY growing out of any action with respect to which CBIC is required to indemnify the City.

## **ARTICLE 9. INSURANCE**

9.1. During the term of this Agreement, CBIC shall procure and maintain continuously in force Public Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release of threatened release of a hazardous substance; and Fire Legal Liability Insurance with limits not less than \$100,000; and shall be with a company authorized to do business in Minnesota. Such coverage shall include all CBIC activities occurring on or within said Premises whether said activities are performed by employees or agents of CBIC.

9.2 **The City of Duluth shall be named as an Additional Insured** on said policies of insurance required by this Article. All policies of insurance shall be approved by the City Attorney and shall contain a condition that it may not be cancelled without thirty (30) days written notice to the City. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition. CBIC shall also provide evidence of Statutory Minnesota Worker's Compensation Insurance.

9.3 The City reserves the right to require CBIC to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minnesota Statutes Section 466.04 are increased. The City does not intend to waive any legal immunities, defenses or liability limits.

9.4 CBIC shall not be considered a co-insured on any fire legal liability insurance that the City may purchase.

9.5 Nothing in this Article shall be construed as preventing CBIC from procuring other insurance coverages it deems advisable.

## **ARTICLE 10. REPORTING**

10.1 In accordance with the provisions of Minnesota law, CBIC agrees to establish and maintain, in accordance with generally accepted accounting practices for not-for-profit organizations, books, records, documents and systems of accounts relevant to this Agreement for a period of six (6) years from the termination of this Agreement. Upon Seventy-two (72) hours advance notice by the City, CBIC shall provide all requested financial information. Pursuant to Minnesota Statutes Section 16C.05, the books, records, documents and accounting procedures and practices of CBIC shall be subject to examination by the State and/or Legislative Auditor, as appropriate, for a minimum of six (6) years.

10.2 During each year of this Agreement, CBIC shall provide to the City its Annual Operating Budget. Such budget shall include identification of all funding sources. The budget shall be delivered to the City Auditor no later than one month following the beginning of the CBIC's fiscal year. CBIC shall also deliver to the City copies of all tax returns filed pursuant to State and Federal law. Said returns shall be filed within 10 days after the legal filing deadline.

10.3 The City reserves the right to require the CBIC to provide to the City an audited financial report of all CBIC income and expenditures if the City deems the CBIC's filings made pursuant to Paragraph 10.2 inadequate. The audited financial report shall be filed with the City Auditor within 90 days after the demand by the City. The report shall be prepared by a certified public accountant.

## **ARTICLE 11. WORKER'S COMPENSATION**

CBIC and all third party vendors or contractors hired by CBIC shall comply with all Minnesota Worker's Compensation laws in the utilization of all employees employed on the Premises. CBIC shall supply to the City appropriate evidence of such Worker's Compensation Insurance with coverage in statutory limits for all entities required to have such insurance a minimum of ten (10) days prior to commencement of activity on the Premises. Employees, agents, or contractors of CBIC shall at no time be considered employees or agents of the City.

## **ARTICLE 12. INDEPENDENT CONTRACTOR**

12.1 It is agreed that nothing herein contained is intended to and shall not be construed in any manner as creating or establishing the relationship of co-partners or joint ventures between the parties or as constituting CBIC as an agent, representative or employee of the City for any purpose or in any manner whatsoever. CBIC and any officers or employees thereof shall not be considered employees of the City and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of CBIC arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, its officers, agents,

contractors and employees, shall in no way be the responsibility of the City. CBIC and its officers, agents, contractors and employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever, including without limitation medical and hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability or severance pay and PERA. Furthermore, the City shall not, in any way, be responsible to defend, indemnify or save harmless CBIC from liability or judgments arising out of the intentional or negligent acts or omissions of CBIC or any employee while performing the work or services specified by this Agreement.

12.2 It is not the intent of the parties by this Agreement to create a joint enterprise or joint venture and the parties expressly waive any right to claim such status in any matter arising from this Agreement.

### **ARTICLE 13. CITY DUTIES**

13.1 The City shall be responsible for all maintenance and repair of one chair lift. The City shall not be obligated to replace the chair lift should such replacement become necessary.

13.2 The City shall groom and maintain the alpine ski trails currently established on the Premises. The parties agree to cooperate regarding the timing and scheduling of such grooming and maintenance, but in the event of a disagreement, the City shall have the sole final decision making authority.

13.3 The City may groom and maintain nordic ski trails at the Premises. The parties agree to cooperate regarding the timing and scheduling of such grooming and maintenance, but in the event of a disagreement, the City shall have the sole final decision making authority.

13.4 The City shall provide assistance with snow-making operations. Such assistance shall include the transporting, set-up, take down, and placement of the snow-making gun(s). Such assistance also includes the maintenance of the water and power systems required for gun(s) operation.

13.5 The City may operate, groom and maintain speed skating facilities at the Premises. The City shall have the right to exercise sole decision making as to the operation of such skating facilities.

13.6 The City shall have the sole right to establish the hours during which Chester Bowl shall be open. The City shall have the sole authority to open and close the entrance gate to Chester Bowl. The parties agree to cooperate regarding establishment of hours of operation but in the event of a disagreement, the City shall have the sole final decision making authority.

13.7 The City shall have the right to control the rental of the caretaker apartment located in the Chalet and all terms and conditions of such rental.

13.8 The City reserves the right to permit other user groups to have use and/or rental of the Premises. This right does not apply to the Chalet rental provided for in Paragraph 3.11 or storage areas identified in Paragraph 3.13. The parties agree to coordinate all City uses. CBIC acknowledges and agrees that the Premises are a multi-use site requiring the cooperation of all users. CBIC agrees that the City shall have the sole right to determine the appropriate use of the site and shall prevail in any disputes between user groups.

13.9 The City shall be responsible for routine repair of electrical, plumbing and mechanical systems, floors, walls, ceilings and glass replacement. City shall be responsible for major maintenance such as major roof repair or replacement, and major repair or replacement of mechanical, plumbing and electrical systems.

13.10 The City shall be responsible for maintenance and snow and ice removal of all roads and parking areas within the Premises.

13.11 The City shall be responsible for keeping all grass, weeds and other similar vegetative materials mowed or otherwise controlled.

13.12 Except as otherwise provided herein, the City shall furnish CBIC, during the period of this Agreement, without cost to CBIC, necessary power, water, natural gas, telephone, and garbage service for operation of the Premises. The City shall not be obligated to provide for garbage service for any festival event presented by CBIC

13.13 The City may present a "Music in the Park" series of concerts. If so:

- a. The City will schedule musicians and provide all equipment necessary to present the concerts.
- b. The City will obtain valid ASCAP, BMI and SESAC licenses for this concert series.
- c. CBIC shall be identified as a major sponsor. The City will include the CBIC logo on all printed materials, printed promotional items, printed advertisement and banners. The City will recognize CBIC as a major sponsor in all press releases, media kits, radio and/or television advertising.

#### **ARTICLE 14. MANAGEMENT COMPENSATION**

For satisfactory performance of this Agreement, and in addition to all fees and revenues retained by the CBIC pursuant to this Agreement, City shall pay to CBIC an annual management fee of Twenty Thousand (\$20,000) payable from Fund 110-121-1219-5319. The fee shall be paid in equal quarterly installments. The installments

shall be due and payable on January 15<sup>th</sup>, April 15<sup>th</sup>, July 15<sup>th</sup>, and October 15<sup>th</sup>, of each year of this Agreement.

## **ARTICLE 15. TERMINATION OF OCCUPANCY OR AGREEMENT**

15.1 Upon termination of occupancy, CBIC agrees to surrender possession of the Premises and all improvements thereto to the City in as good condition and state of repair as said Premises were in at the time CBIC took possession, normal wear and tear excepted. CBIC shall cooperate to the fullest extent in effectuating an orderly and efficient transfer of the operation and management of the Premises from the CBIC to the City or its designee.

15.2 This Agreement may be terminated by either party upon breach of the other party of any of the terms and conditions of this Agreement. Prior to such termination, the terminating party shall provide written notice of the breach and shall further provide the breaching party ten (10) business days after transmission of such notice to cure said breach.

## **ARTICLE 16. FORCE MAJEURE**

16.1 Under the terms of the Agreement, neither party shall be considered in default or in breach of any of the terms with respect to the performance of their respective obligations in the event of enforced delay in the performance of its obligations due to unforeseeable caused beyond its control and without its fault or negligence, including but not limited to acts of God, acts of a public enemy, acts of the federal government, acts of a third party, fire, floods, epidemics, strikes or embargoes.

16.2 Under the terms of the Agreement, the City shall not be considered in default or in breach of any of the terms with respect to the performance of its obligations under this Agreement in the event of any judgment or order enjoining the City's performance of its obligations under the terms of this Agreement or finding the City in violation of any law, rule or regulation, as a result of this Agreement. In such case, such judgment or order shall constitute cause for immediate termination by the City which shall have the absolute right, and at its sole discretion, to terminate this Agreement immediately as provided by Article 15.

## **ARTICLE 17. GENERAL PROVISIONS**

17.1 The right of CBIC to occupy, use, and maintain the Premises shall continue only so long as all of the undertakings, provisions, covenants, and conditions herein contained are on its part complied with strictly and promptly.

17.2 CBIC shall not assign or transfer any of its rights or interests under this Agreement in any way whatsoever.

17.3 CBIC for itself and its officers, agents, servants and employees as part of the consideration under this Agreement does hereby covenant and agree to comply with all laws relating to unlawful discrimination. CBIC shall provide reasonable accommodations as required by the Americans with Disabilities Act for any qualifying individual or group requesting such accommodations

17.4 This Agreement is to be construed and understood solely as an Agreement between the parties hereto and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that she or he is a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties hereto, may be waived at any time by mutual agreement between the parties hereto.

17.5. CBIC agrees to conduct all activities on the Premises in strict compliance with the United States Constitution, and with the laws, rules and regulations of the United States, State of Minnesota, St. Louis County, and the City of Duluth.

17.6 The waiver by the City or CBIC of any breach of any term, covenant, or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition herein contained.

17.7 Notice to City provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to City of Duluth Parks and Recreation (Attn: Manager), 12 East Fourth Street, Duluth, Minnesota, 55805. Notices to CBIC shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to Chester Bowl Improvement Club, Attn. President, 1801 East Skyline, Duluth, MN 55812, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

17.8 This Agreement shall be controlled by the laws of the State of Minnesota.

17.9 This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

17.10 This Agreement, embodies the entire understanding of the parties and there are no further or other agreements, permits, or understandings, written or oral, in effect between the parties relating to the subject matter hereof. This understanding shall also extend to any uncommunicated expectations CBIC may have of the City and not specifically mentioned in this Agreement. The City is not obligated to honor any CBIC expectation of the City for the providing of any City materials, supplies, or services which are over and above those specifically mentioned in either this Agreement.

17.11 The parties represent to each other that the execution of this Agreement has been duly and fully authorized by their governing bodies or boards, that the officers of the parties who executed this Agreement on their behalf are fully authorized to do so,



and that this Agreement when thus executed by said officers of said parties on their behalf will constitute and be the binding obligation and agreement of the parties in accordance with the terms and conditions hereof.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH

CHESTER BOWL IMPROVEMENT CLUB

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Its Chair

ATTEST:

\_\_\_\_\_  
City Clerk

COUNTERSIGNED:

\_\_\_\_\_  
City Auditor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

